



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Herbert J. Sauve  
4 Sherwood Drive  
Westford, MA 01886

Re: Tax Map 50 Lot 15 Block 1  
Tuftonboro, New Hampshire

**NOTICE OF PROPOSED  
LICENSE ACTION  
No. 04-002**

March 5, 2004

**I. INTRODUCTION**

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division ("DES") to Herbert J. Sauve, pursuant to RSA 541-A:30 and RSA 482-A:8. DES is proposing to revoke permit No. 2003-01620 for the construction of a seasonal dock, held by Herbert J. Sauve, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Herbert J. Sauve is an individual having a mailing address of 4 Sherwood Drive, Westford, MA 01886.

**III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to Wt 204.05:
  - "(a) The director shall make an initial decision to suspend, revoke or modify a wetlands permit whenever s/he receives information that supports a conclusion that the owner or contractor is not in compliance with the terms of the permit.
  - (b) Upon making such an initial decision, the director shall notify the owner or contractor in writing of the intention to suspend, revoke, or modify said permit and provide an explanation of the basis for the director's decision.

(c) Pursuant to RSA 541-A:30 and RSA 482-A:8, the director shall schedule a hearing on the notice of proposed permit suspension, revocation, or modification.”

3. Mr. Sauve is the owner of lakefront property located at Eaglemere South, Lake Winnepesaukee, Tuftonboro, NH, more specifically identified on Tuftonboro Tax Map 50 as Lot 15 Block 1 (“the Property”).

4. DES issued Wetlands and Non-Site Specific Permit No. 2003-01620 (“the Permit”) to Herbert Sauve, to allow installation of a 4-by-20 foot seasonal dock on 30 feet of frontage on Lake Winnepesaukee.

5. In accordance with RSA 482-A:3, Excavating and Dredging Permits, “No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp, or in and adjacent to any waters of the state without a permit from the department.”

6. In accordance with RSA 482-A:3, XIII (a), “All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.”

7. In accordance with RSA 482-A:3, XIII (c), “Notwithstanding the provisions of subparagraph (a), boat docking facilities may be located closer than 20 feet from an abutter’s property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.”

8. In accordance with Rule Wt 505.01, (h), Application Completeness Requirements, “As part of the expedited minimum impact application...the applicant shall provide the department with...[a]n accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on areas in the department jurisdiction detailing the precise location of the project.”

9. DES personnel conducted a site inspection at the request of a shoreline abutter, Mr. Erskine, on October 3, 2003. The inspection revealed that the photographs submitted by Mr. Sauve showed the wrong project location, and the plans did not depict the eroded, concave frontage.

10. On October 13, 2003, DES approved the request for reconsideration by the abutter, for a permit to install a 4-by-20 foot seasonal dock.

11. On October 20, 2003, DES received a notarized letter from the other shoreline abutter, Ms. Batley, rescinding her waiver of the 20 foot setback, pursuant to RSA 482-A:3, XIII (c).

#### IV. VIOLATIONS ALLEGED

1. Mr. Sauve misstated the material facts by failing to submit an accurate drawing depicting the precise location of the project and the existing site conditions, as required per Rule Wt 505.01(h).
2. Mr. Sauve misrepresented the project location by failing to submit photographs which clearly showed the area to be impacted as required per Rule Wt 505.01(i).
3. Mr. Sauve lacks the necessary signed, notarized abutter waiver required by RSA 482-A:3, XIII (c) for installation of a seasonal dock within the 20 foot setback as it was rescinded by the abutter.

#### V. PROPOSED ACTION

1. Based on the violations identified in IV, above, DES proposes to revoke the Permit for the installation of a 4-by-20 foot seasonal dock on the Property.

#### VI HEARING, REQUIRED RESPONSE

You have the right to a hearing to contest these allegations before the proposed license action is taken. A hearing on this matter has been scheduled for **Monday, May 3, 2004**, at 1:00 p.m. in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Mr. Sauve is required to respond to this notice.** Please respond **no later than April 3, 2004**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If you choose to waive the hearing, please sign the waiver (lower portion) and return it to the DES Legal Unit. If you waive the hearing, DES is prepared to revoke the Permit.
3. RSA 541-A:31, III(e) provides that you have the right to have an attorney present to represent you at your expense. If you choose to be represented by an attorney, the attorney must file an appearance and submit proposed findings of fact to the person conducting the hearing.
4. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination.
5. **If you wish to have a hearing but are unable to attend as scheduled**, you must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env C 204.09.

6. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Anyone having questions regarding this matter should contact Mary Ann Tilton, Enforcement Supervisor, at 271-4061.

**COPY**

Harry T. Stewart, P.E., Director  
Water Division

cc: Board of Selectmen, Town of Tuftonboro  
Michael J. Walls, Assistant Commissioner, DES  
Gretchen Rule, Administrator, DES Legal Unit  
Mary Ann Tilton, Compliance Supervisor, Wetlands Bureau  
Rene Pelletier, Manager, Land Resources Management Program  
Collis Adams, Administrator, Wetlands Bureau  
Erskine Family Trust  
John & Claire Batley

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**HERBERT J. SAUVE  
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN APRIL 3, 2004**

**APPEARANCE** On behalf of Herbert J. Sauve.

\_\_\_\_\_ I will attend the hearing scheduled for Monday, May 3, 2004, at 1:00 p.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**WAIVER OF HEARING** On behalf of Herbert J. Sauve

\_\_\_\_\_ I certify that I understand my right to a hearing regarding the imposition of the Notice of Permit Revocation and that I hereby waive those rights.

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Scalfani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**29 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**